

**4/30/19 STUDY SESSION AGENDA - FY 2019-20 CAPITAL IMPROVEMENT PROGRAM  
SUPPLEMENTAL EMAIL SUBMITTED TO THE CITY COUNCIL BY ANTHONY HIGGINS  
ON 4/30/19 AT 11:55 A.M.**

**From:** tony <tony.higgins123@gmail.com>

**Sent:** Tuesday, April 30, 2019 11:55 AM

**To:** City Council <citycouncil@hermosabch.org>

**Cc:** Tony Higgins; Suja Lowenthal; Ann Yang; Lucho Rodriguez; Robert Smith; Gary Mammet; Victor Arizpe; linseymill; Walter Booty; r f

**Subject:** City Attorney Office Commitment to pave 27th street by end of Fiscal Year 2019-20

Tuesday, April 30, 2019

Section E. of the attached document from the Herмоса Beach City Attorneys Office includes a commitment to fully pave 27th by the end of FY 2019-20.

QUOTE:

E. Current Efforts to Improve 27th Street

There are current plans in place to repair the trench near 346 27th Street, which is scheduled for October 3, 2018. This should help eliminate noise and vibration complaints from vehicles driving over this location. There are also future plans for a full paving of 27th Street by the end of the 2019-2020 fiscal year.

END QUOTE

Moreover I have similar verbal commitments from Public Works.

Yet, the City Managers Office did NOT include a recommendation for funds in the FY 2019-20 CIP draft being discussed tonight to pave 27th Street OR study the safety and environmental impacts of allowing 27th to become a defect trucks route and an arterial-roadway.

The city is fully aware that the road-surface on 27th street between Morningside Drive and Manhattan has completely failed.

City Crews have been dispatched to fill about 75 potholes and 40 or so curb to curb transverse cracks.

These repairs have taken place on at least 3 occasions in the past 4 months and some of those repairs have had to be repaired twice. Many other pothole-patches made just in the past 2 months have again-failed because of the constant heavy truck traffic.

The city is fully aware that roads deteriorate at an exponential rate once they reach a certain level of decay and the Fugro Pavement Condition analysis commissioned by the city confirms this fact in a chart I have sent to the Council and City Manager's Office several times.

27th street is in the throes of exponential road-surface decay as evidenced by the frequent repairs that deteriorate within weeks of being implemented. There can be no question about that.

27th street needs full resurfacing CONSISTENT with the City Attorney's Office commitment in the 9/25/18 letter, including a fix for the drainage ditch at Morningside Drive on 27th street eastbound that commonly lift truck beds off their frame slam down at over 110dB.

Despite the repairs cited by the City attorney in Section E of the 9/28 letter, we are again experiencing the same slamming, noise and vibration, only its occurring at several different points on 27th street east and westbound not just 345 27th street. The constant stream of heavy delivery and heavy construction trucks on weekdays is destroying our neighborhood.

The overall truck and vehicle noise situation on 27th has gotten much worse, not better.

Finally, as it relates to Capital Improvements, the telephone poles on 27th westbound need to be removed.

These poles obstruct a steep narrow sidewalks on 27th where trucks roar by inches from the curb. A baby stroller can not fit by. In places there is less than 18 inches clearance.

The sidewalks are not ADA compliant.

The City Managers Office is fully aware of these road conditions and is fully aware of the September 25th, 2018 document from the City Attorneys Office. In fact, this very document was recently cited by the City Manager in Open Session of the City Council meeting as evidence of the Cities responsiveness to the concerns I have raised about trucks on 27th and the safety, pollution, noise and vibration they bring.

Dear Counmembers,

Please address these issues squarely in the CIP planning meeting tonight and please do what you can to honor the cities commitments.

Thank You,  
Anthony Higgins

PS: I counted 24 heavy trucks just in the time it took to type this email. Each time my house rattled and I could not hear the radio playing in the background.



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**John M. Natalizio**  
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September 25, 2018

**VIA U.S. MAIL & EMAIL:** TONY.HIGGINS123@GMAIL.COM

Anthony Higgins  
2705 Morningside Drive,  
Hermosa Beach, CA 90254

Dear Mr. Higgins:

This letter is in response to your correspondence with the Hermosa Beach City Attorney and other City staff contending that vehicles exceeding three tons may not use a restricted street unless making a pickup or delivery on that specific street. This letter supplements the City's recent response to your Public Records Act request.

You contend that Vehicle Code § 35703 and Hermosa Beach Municipal Code ("HBMC") § 10.24.040 only permit vehicles exceeding three tons to travel on a restricted street if the delivery or pickup is on that specific street. You further contend that the "direct-route provision" of these Codes only applies to "unrestricted" streets.

With all due respect, we do not agree with your reading and interpretation of these Codes. Our reading of Vehicle Code § 35703 and HBMC §10.24.040 is that vehicles exceeding three tons heading to and coming from a truck route may use restricted streets, when necessary, as a direct route to make deliveries and pick-ups on the restricted streets, and/or to deliver materials to be used in repairs, alterations, remodeling, or construction on the restricted streets.

**A. Truck Routes in Hermosa Beach**

Presently, the established truck routes in Hermosa Beach are: (1) Pacific Coast Highway; (2) Artesia Boulevard; (3) Pier Avenue; (4) Valley Drive south of Pier Avenue; and, (5) Aviation Boulevard. All other streets have been designated as "restricted" streets.

**B. Authority to Prohibit Use of Streets**

California Vehicle Code § 21101 provides authority for cities to regulate use of local highways based on safety considerations and the weight and size of vehicles. Additionally, Vehicle Code § 35701(a) expressly permits cities to prohibit, by ordinance, the use of a street by any vehicle exceeding a maximum weight limit. The City of Hermosa Beach exercised its truck routes and weight limit authority by ordinance in 1986 when it adopted HBMC § 10.24.020 (formerly Section 19-109), which provides the following:



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Those streets and parts of streets established by resolution of the city council are declared to be truck routes for the movement of vehicles exceeding a maximum gross weight of three tons.

**C. Limitations on the City's Authority to Regulate Streets**

Although the general rule is that cities may prohibit vehicle traffic based on vehicle weight, cities are not given blanket authority to prohibit any and all such traffic on every road. There are many exceptions, statutory and otherwise, to Vehicle Code § 35701. Germane to this letter is the exemption codified in Vehicle Code § 35703<sup>1</sup>, which exempts vehicles over a certain weigh limit coming to or from a truck route and having a destination or point of origin on a restricted street. Section 35703 provides:

No ordinance adopted pursuant to Section 35701 shall prohibit any commercial vehicles coming from an unrestricted street having ingress and egress by direct route to and from a restricted street when necessary for the purpose of making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on the restricted street or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted street for which a building permit has previously been obtained.

As provided in the plain language of the statute, a commercial vehicle exceeding the weight limit (in the City of Hermosa Beach it is three tons) may use restricted streets as a direct route when the vehicle is coming from or going to a truck route and is using the restricted streets for the purposes of making pickups or deliveries of goods on the restricted streets, and/or is delivering materials to be used in repairs, alterations, remodeling, or construction on the restricted streets.

This statute is interpreted broadly and, contrary to your interpretation, is not meant to limit commercial trucks to only use a restricted street if the delivery or pickup is on that specific restricted street. This is often impossible in Hermosa Beach and would result in most streets

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<sup>1</sup> The City enacted its local exemption under HBMC § 10.24.040, which provides:

When any such truck route is established and designated by appropriate signs, the operator of any vehicle exceeding a maximum gross weight limit of three tons shall drive on such route and none other; except, that nothing in this section shall prohibit the operator of any vehicle exceeding a maximum gross weight of three tons coming from a truck route having ingress and egress by direct route to and from restricted streets when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on such restricted streets or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted streets for which a building permit has previously been obtained therefor.



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never receiving deliveries or pickups. In fact, the courts have held that the “obvious intendment” of this section “confers an exemption on commercial vehicles making pickups or deliveries of goods on or along the city's streets.” *Ratkovich v. City of San Bruno* (1966) 245 Cal.App.2d 870, 888. The courts have also opined that “[i]t is obvious that the purpose of [Vehicle Code] sections 35701—35704 considered together is to authorize municipalities to prescribe regulations for business and commercial vehicles on city streets . . . but at the same time to see to it that such vehicles, while subject to restriction, can be used for their proper functions where the vehicles are necessarily in such use.” *Id.* at 888.

It is understandable why the law expressly requires the City to exempt vehicles that meet the above requirements. Hermosa Beach does not have an extensive truck route network, particularly in the northwestern region of the City. There are no designated truck routes west of Pacific Coast Highway and north of Pier Avenue. As such, there is a significant area of land where commercial and residential addresses are not near a designated truck route but still need deliveries and pickups by vehicles over three tons.

**D. The Legislative History Supports Commercial Vehicle Use of Restricted Streets**

The conclusion reached in this letter has been the City’s position since the enactment of truck routes in 1986. The issue of access to Hermosa Beach by commercial vehicles has been historically recognized as a problem for residents and businesses not living near a truck route but needing deliveries and pickups.

On June 24, 1986, the City Council approved Resolution No. 86-4954, which first established truck routes in Hermosa Beach and provided significant access to commercial vehicles throughout the City, including designated truck routes on major thoroughfares, such as Hermosa Avenue, Manhattan Avenue, Valley Drive, and Ardmore Avenue.

On December 16, 1986, after receiving resident complaints, the City Council adopted Resolution 86-4999, which then significantly reduced truck routes in Hermosa Beach by eliminating truck routes on Valley Drive, Ardmore Avenue, Hermosa Avenue, Manhattan Avenue, and Second Street. The City Council relied on the reasoning in the staff report, which justified removing these streets as truck routes by citing to HBMC § 10.24.040 (then Article 5, Section 19-111) and explaining the exemption to mean that “the designation of ‘Truck Routes’ does not prohibit delivery personnel/vehicles from using ‘restricted’ streets for the purpose of making deliveries and returning only.” The staff report justified removing Hermosa Avenue and Manhattan Avenue as truck routes because “if a street is not formally designated to be a ‘Truck Route’ this will not prohibit delivery vehicles from making their specific deliveries on these non-designated streets.”

The staff report also recognized the historical use of 27th Street by vehicles over three tons to access local deliveries in northwestern Hermosa Beach. The staff report noted that the “pattern of streets in Hermosa Beach, coupled with the location of commercial streets, makes it impossible



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not to have some trucks drive on a residential street to exit the area.” The staff report further noted that “trucks making deliveries to northwest Hermosa Beach must access these commercial businesses via Hermosa Avenue and/or Manhattan Avenue. Delivery trucks either: a) use streets of residential character (typically 27th St., 31 St., or Longfellow Ave.; b) exit via Manhattan Avenue, or c) make a u-turn on Hermosa Ave. or Manhattan Ave.”

The use of restricted streets by vehicles over three tons, particularly on 27th Street, is not new to the City and has been commonplace since at least 1986. The City has recognized that it is impossible for vehicles over three tons to not use residential streets. Additionally, the 1986 staff report specifically mentions that 27th Street has been a typical route that delivery vehicles take to make deliveries and pickups on the restricted streets in the northwestern part of the City. It provided “[d]elivery trucks . . . use streets of residential character (typically 27th St., 31 St., or Longfellow Ave.” As such, the present and continued use of 27th Street is consistent with longstanding policy and practice.

**E. Current Efforts to Improve 27th Street**

There are current plans in place to repair the trench near 346 27th Street, which is scheduled for October 3, 2018. This should help eliminate noise and vibration complaints from vehicles driving over this location. There are also future plans for a full paving of 27th Street by the end of the 2019-2020 fiscal year.

**F. Conclusion**

We hope that this explanation has answered your inquiries regarding this subject matter.

Sincerely,

A handwritten signature in blue ink that reads "John M. Natalizio".

John M. Natalizio  
Assistant City Attorney  
City of Hermosa Beach